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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,475	03/16/2005	Valerio Bramati	RN02009	5463

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Jean Louis Seugnet
Intellectual Property Department
Rhodia Inc CN 7500
259 Prospect Plains Road
Cranbury, NJ 08512-7500

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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08/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/502,475

Applicant(s)

BRAMATI ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/12/07;5/14/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-20 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 16-20,27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election requirement dated 4/20/07 is improper and therefore withdrawn because Examiner Clardy examined all the claims in office action dated 7/11/06.

Restatement of Examiner Clardy's rejection dated 7/11/06

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-20,27-30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (US '932), Hasebe et al (US '863) and Sato et al (US '332). New or presently presented claim 31 has been added to this rejection.

Chen et al teach aqueous formulations comprising agrochemicals such as herbicides including glufosinate (columns 7-8), electrolytes such as inorganic salts (columns 5-6), and other additives such as surfactants, including betaine derivatives (column 6, lines 39-59), solvents, dispersants, etc. (col 3, lines 37-68+).

Hasebe et al teach liquid enhancer compositions for amino acid herbicides such as glyphosate, bialaphos, and glufosinate (col 5, lines 23-28) comprising a tertiary amine such as betaine (col 3 lines 58-62) and an oxalic acid compound (abstract). Other components may include surfactants (columns 4-5 and inorganic salts (col 6, lines 12-16). Table 1 lists several compositions comprising polyoxyethylated fatty amine / ammonium compounds.

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Sato et al teach high concentration (100 to 600 g ae/L, col 6, lines 64-66) glyphosate compositions comprising activity enhancing surfactants (columns 8-10) such as trialkylbetaines (col 10, lines 7-12) and alkyl glycosides / polyglycosides (col 8, lines 23-24, 48-50), at amounts ranging from 2 to 25% by weight (col 11, lines 1-2), with optional additives such as inorganic salts (col 11, lines 8-10: ammonium sulfate, potassium sulfate, potassium chloride, or sodium sulfate), and additional active agents such as bialaphos and glufosinate (lines 44-56).

One of ordinary skill in the art would be motivated to combine these references because they disclose components, which are useful for formulating and enhancing the activity of aqueous glyphosate or aminophosphate herbicide compositions.

Response to Applicants' Argument

Applicants argue:

- a) The claimed invention provides new herbicide formulations that show a high efficacy, while being stable, and avoids drawbacks of standard formulations comprising alkoxylated amine.
- b) The instant formulation comprises a betaine surfactant. This surfactant makes it possible to obtain an efficacy at least equal to the one obtained with an equivalent amount of alkoxylated amine thereby avoiding the toxicity issue associated with the amine.
- c) Hasebe lists many nitrogen-containing surfactants, including betaine. Hasebe is mute to glycoside surfactants. Note, betaine surfactants are not

tested in Hasebe. It would not be obvious to try betaine surfactants since they are listed in a long list of compounds.

- d) Sato ammonium glyphosate compositions comprise an amount of suitable surfactants including betaines and glycosides. There exist no motivation in Sato's teaching to motivate the election of betaine and/or glycoside surfactants
- e) New / previously present claim 31 does not encompass ammonium glyphosate salt making it outside Sato's teaching.

Examiner's argues that the Applicants make mention that unexpected results are obtained for a glyphosate composition comprising a betaine surfactant. However, applicants do not provide a showing of unexpected results for a glyphosate composition comprising a betaine surfactant in comparison to a glyphosate composition comprising an alkoxylated amine surfactant. Since the prior art broadly teaches combining glyphosate salts with surfactants including betaine and glycoside surfactants, it would have been obvious to try the mixture. Note a prior art reference is not required to exemplify or explicitly teach the combination of ingredients in order to make a claimed combination of ingredients obvious. The mere fact that the prior art broadly discloses the ingredients and suggests that mixtures of ingredients can be formulated would make it obvious to try all the mixtures disclosed in the specification of the prior art references. Note that it is glyphosate that is the active component of a salt or adduct comprising it. The metal or adduct portion of the glyphosate is not responsible for the activity of the glyphosate. For these reasons the rejection on record is maintained.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Alton Pryor', is positioned above the printed name.

Alton Pryor
Primary Examiner
AU 1616